

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 25<sup>TH</sup> DAY OF NOVEMBER 2024 / 4TH AGRAHAYANA, 1946

BAIL APPL. NO. 7594 OF 2024

CRIME NO.887/2024 OF ADIMALY POLICE STATION, IDUKKI

PETITIONER:

BABURAJ JACOB,  
AGED 58 YEARS  
S/O JACOB, PUTHENPARAMBIL, TALENT SCHOOL  
ROAD,ASOKAPURAM, ALUVA,KOCHI, PIN - 683101

BY ADVS.  
S.RAJEEV  
V.VINAY  
M.S.ANEER  
SARATH K.P.  
PRERITH PHILIP JOSEPH  
ANILKUMAR C.R.  
K.S.KIRAN KRISHNAN

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,  
PIN - 682031
- 2 STATION HOUSE OFFICER,  
ADIMALI POLICE STATION,IDUKKI DISTRICT, (CRIME NO  
887/2024 OF ADIMALI POLICE STATION, IDUKKI),  
PIN - 685561  
  
SR.PP. SRI.C.K.SURESH,

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
25.11.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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## **ORDER**

Dated this the 25th day of November, 2024

The application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short), for an order of pre-arrest bail.

2. The petitioner is the sole accused in Crime No.887/2024 of the Adimaly Police Station, Idukki, which is registered against him for allegedly committing the offences punishable under Sections 376(2)(n), 354A(1)(i) and 354A (1) (ii) of the Bharatiya Nyaya Sanhita, 2023.

3. The prosecution case, in brief, is that the survivor is an actress. She is legally separated from her husband. She has two children in her wedlock. In February 2017, she worked as a receptionist in a resort owned by the accused. But the accused's son quarrelled with her, and she left the job and went to Dubai. Then, the accused again contacted her and offered a role in a movie and a job in his resort. Consequently, the survivor joined the accused. One day in 2018, while the accused was cleaning the accused's bedroom, he



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committed rape on her. On the third day after the said incident, the accused again raped her. Then, the accused's son abused the survivor, and she resigned. In 2019, the accused again called the survivor and offered her a role in a movie. He invited her to his residence at Aluva and committed rape on her. As the survivor was separated from her husband and was living with her mother, and with nobody to help her, she did not reveal the incidents to anyone. In 2023, the survivor got remarried. She revealed the above incidents to her present husband, who gave her the courage to get the FIR registered.

4. Heard: Sri. S. Rajeev, the learned counsel appearing for the petitioner and Sri.C.K.Suresh, the learned Special Public Prosecutor.

5. The learned counsel for the petitioner submitted that the petitioner is innocent of the accusations levelled against him. The alleged incidents occurred between 1.1.2018 and 31.12.2019, but the FIR was registered only on 2.9.2024, which is five years after the last incident. This, by itself, proves the falsity and frivolity of the crime. There is no plausible explanation for the inordinate delay in



registering the FIR. The learned counsel relied on the decision of the Hon'ble Supreme Court in **Siddique v. State of Kerala** [2024 KHC OnLine 6641] to canvass the position that an inordinate delay in registering the FIR entitles an accused to an order of pre-arrest bail. The learned counsel contended that the petitioner is entitled to the benefit of the principles laid down in the decision. He also submitted that a reading of Annexure-A2 communications between the petitioner and the survivor establishes that they had a consensual relationship. Therefore, by no stretch of imagination will the offence under Section 376(2) (n) of the IPC be attracted to the facts of the case. The petitioner is willing to abide by any stringent condition that may be imposed by this Court and cooperate with the investigation. Therefore, the application may be allowed.

6. The learned Public Prosecutor opposed the application. He submitted that there are incriminating materials to substantiate the petitioner's involvement in the crime. If the petitioner is granted an order of pre-arrest bail, it will hamper the investigation. The petitioner may also intimidate the survivor and tamper with the evidence. Hence, the application may be dismissed.



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7. The prosecution case is that the petitioner had committed rape on the survivor multiple times between 1.1.2018 and 31.12.2019.

8. Undisputedly, the FIR is registered only on 2.9.2024, i.e., after a period of five years from the date of the last incident. The explanation put forth by the petitioner for the delay is that, as she was living separately from her husband, she did not have the courage to register the FIR. After she got remarried, she mustered the courage to register the present FIR. Prima facie, I do not find the said explanation to be appealing. Nevertheless, that is a matter to be decided after trial.

9. In the case of an identical nature, in **Siddique v. State of Kerala** [2024 KHC OnLine 6641], the Hon'ble Supreme Court has observed thus:

“4. Having regard to the submissions made by the learned senior counsels for the parties and perusing the documents on record including the pleadings, we deem it appropriate not to assign elaborate reasons, particularly considering the sensitivity of the case. However, considering the fact that the complainant had lodged the complaint almost eight years after the alleged incident, which had taken place in 2016 and the fact that she had also posted the post on facebook somewhere in 2018, making allegations against about 14 people, including the appellant with regard to the alleged sexual abuse, as also the fact that she had not gone to the Justice Hema Committee constituted by the High Court of Kerala for ventilating her grievance, we are inclined to accept the present appeal, subject to certain conditions mentioned hereinafter”.

10. On a careful consideration of the facts and the



materials placed on record, particularly on comprehending the inordinate delay in registering the FIR, the principles laid down by the Hon'ble Supreme Court in the afore-cited decision, and on prima facie being satisfied that the petitioner and the survivor had a consensual relationship and at this distance of time the petitioner's custodial interrogation is not necessary, I am satisfied that the petitioner has made out valid grounds to invoke the discretionary jurisdiction of this Court under Section 482 of the BNSS. Hence, I am inclined to allow the application, subject to the following conditions.

In the result, the application is allowed subject to the following conditions:

- (i) The petitioner is directed to surrender before the Investigating Officer within ten days from today.
- (ii) In the event of the petitioner's arrest, the Investigating Officer shall release the petitioner on bail on him executing a bond for Rs.1.00,000/- (Rupees one lakh only) with two solvent sureties for the like amount each;
- (iii) The petitioner shall appear before the Investigating Officer between 9 a.m. and 2 p.m. for three days from the date of his release. The Investigating Officer would be at liberty to interrogate the petitioner during the said period and also subject him to medical examination, including conducting his potency test, if felt necessary. The petitioner shall also appear before the



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Investigating Officer as and when directed.

- (iv) The petitioner shall not directly or indirectly make any inducement, threat or procure to the survivor or her witnesses or any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;
- (v) The petitioner shall surrender his passport before the jurisdictional court concerned within a period of one week from the date of his release on bail;
- (vi) The petitioner shall not get involved in any other offence while on bail;
- (vii) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.
- (viii) Applications for deletion/modification of the bail conditions shall also be filed before the jurisdictional court.
- (ix) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) and another*** [2020 (1) KHC 663].
- (x) The observations made in this order are only to consider the application, and they shall not be construed as an expression of the merits of the case, which shall be decided by the competent courts.

SD/-

**C.S.DIAS, JUDGE**

rmm25/11/2024



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